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OFFICE OF PETITIONS

In re Application of
Chambers
Application No. 09/280,618
Filed: March 29, 1999
Attorney Docket No. 129250-000915/US
For: DESTINATION CALL ROUTING
APPARATUS AND METHOD

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed February 16, 2007, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application was held abandoned for failure to timely submit a proper follow-up submission to the Notice of Appeal, filed September 13, 2005. No further submissions being received, the Office contended that this application became abandoned on November 14, 2005. A Notice of Abandonment was mailed on February 2, 2007.

Petitioner requests withdrawal of the holding of abandonment based on the assertion that a RCE, the required fee, and a request to use a previously submitted amendment as the submission were filed on November 10, 2005. Petitioner has provided a copy of his OIPE date stamped return receipt postcard showing that a check for \$990.00, a fee transmittal, a transmittal and a RCE was received in the Office on November 10, 2005.

A review of the copy of the RCE reveals that petitioner listed **completely** incorrect identifiers. The identifiers were those associated with application no. 10/697,498, which appears to be an unrelated application. In addition, it is noted that the certificate of mailing date for the RCE is October 27, 2005, which is significantly before November 10, 2005. The errors in identification of the application were so severe, that the Office could not associate the RCE with the proper application file. The errors were not of the type outlined in MPEP 502. Therefore, the petition under 37 CFR 1.181 is dismissed.

The undersigned suggests filing a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioners intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries may be directed to the undersigned at (571) 272-3230.


Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions